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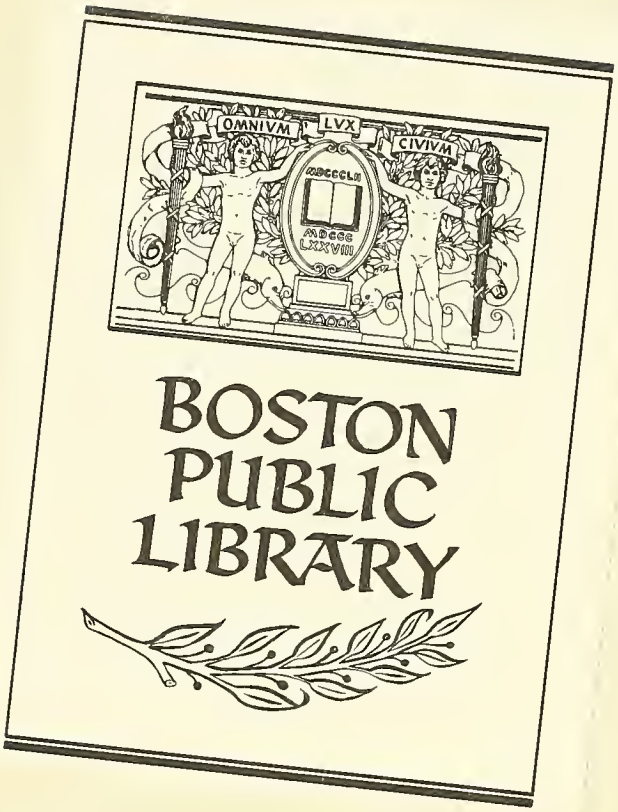

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UNADVERTISED CONTRACTS ISSUED BY THE CITY OF BOSTON IN FISCAL YEARS 1986 & 1987

INTRODUCTION

Every contract executed by the City of Boston in excess of $2,000 must be publicly advertised for bids unless the Mayor gives his written permission to waive that requirement. If this requirement is to be waived, according to the City Charter, the Mayor is to be provided with a signed statement (commonly referred to as a letter to award) from the department head requesting a bidding waiver explaining why it is in the City's best interest to not seek public bids. All letters to award unadvertised contracts must be published in the City Record.

Mayor Raymond L. Flynn issued an Executive Order on Contract Compliance on February, 24, 1984 which established specific procedures on the administration of unadvertised contracts. It stated that they are only to be awarded in, "exceptional circumstances, upon the prior written approval of the Mayor and the Law Department." The Order called for certain information to be included in each award letter specifically documenting the reasons for not seeking public bids. The Executive Order was issued in response to the recommendations of the Flynn Transition Team. Its report, entitled BOSTON IN TRANSITION, A FINANCIAL ANALYSIS, concluded that, Boston's contracts were awarded and monitored with an informality hardly befitting the enormous amount of money at stake and were managed by an inefficient, bureaucratic system that is susceptible to abuse."

The implementation of the Executive Order was evaluated in September, 1984. An internal report produced for the Mayor found, "Numerous weaknesses in the contract system both in terms of accountability and efficiency." Another internal report, issued in October, 1985 reiterated the concerns previously

expressed. It concluded that the large number of unadvertised contracts increased costs to the city, decreased competition and discouraged new business involvement. As a result of that 1985 report the Flynn Administration established an Office of Contract Management in February, 1986. It was to manage the large volume of municipal contracts and try to get control of the process.

FINDINGS

1. The City of Boston continues to issue large numbers of unadvertised contracts. A total of 1,738 were issued in fiscal year (FY) 1986 in an amount of $206 million and another 1,543 were authorized in FY 1987 in an amount of $231.5 million.

2. Compliance with the Mayor's Executive Order on Contract Management is poor. Forty-six percent of all FY 1986 contracts were submitted late and 95 of those were not submitted for Mayoral approval until the contract was actually completed. The FY 1987 performance was even worse with 53% of all contracts either late or after the fact.

3. Although the Office of Contract Administration has acted as a clearinghouse for the processing of city contracts, it has done little to require compliance with contract procedure. It routinely processes contracts which are in direct violation of the Mayor's Executive Order on the management of unadvertised contracts.

4. The publication of contracts issued without bids is unreasonably out of date and useless as a means of informing the public that such contracts are being awarded.

COMPLIANCE WITH EXECUTIVE ORDER ON CONTRACTS

Mayor Flynn's first official act aimed at controlling the issuance of unadvertised contracts was the Executive Order of February 24, 1984. It called for unadvertised contracts to be issued only in exceptional circumstances accompanied by the reasons why bidding was not appropriate. That Order has been widely ignored by almost every city department.

During FY 1986 almost half of all unadvertised contracts were submitted late and many others did not contain the detailed explanation required by the Executive Order in seeking a waiver of the bidding regulations. Nevertheless, most were approved. The situation was worse in FY 1987 when 53% or 819 contracts were submitted late or after the fact. Some examples of the problem created by the late submission of contracts include:

-The Finance Commission received nine contracts submitted by the Mayor's Office of Cultural and Business Affairs for review on May 15, 1987. Eight of the nine were competitive in nature thus subject to public bidding. Three of the contracts began in July, 1986 and four began in August, 1986 yet were not submitted for approval until the following spring. The excuse for the late submission was that the department head believed that the costs would not exceed $2,000 yet the costs ranged from $5,000 to $20,000, all well above the bid limit;

-The Finance Commission received three contracts to review from the Management Information Systems Department (MIS) On July 8, 1987. The Contracts were with Wang Laboratories for $400,000, Computer Assoc. Intl., Inc. for $13,750 and Businessland, Inc. for $9,000. Each contract covered the period July 1, 1986 to June 30, 1987 and had thus expired;

-The Public Facilities Department (PFD), over the past three months, has submitted more than 20 so-called "emergency" contracts to be awarded without bids for over $300,000. The "emergencies" all occurred during the fall of 1986 through March, 1987. A former department employee failed to process the contracts. However, even when that fact became known, PFD officials failed to act expeditiously. Contractors were required to post performance bonds for jobs done months previously and nothing was done to expedite the contracts;

-The Transportation Department submitted a request to award a $100,000 consultant contract covering the period of May 1, 1987 to June 30, 1987. It was received by the Finance Commission for review on June 30, 1987 and included

no information establishing why bidding was not appropriate or why the consultant was selected in the first place;

-The Hay Group was awarded a Police Department contract to provide compensation consulting services from October 1, 1986 to February 1, 1987 at a cost of $34,000. It was not submitted for approval until February 17, 1987;

-Codel Associates had a $65,000 consultant contract to help design a new maintenance facility for the Police Department during the period January 1, 1987 to June 30, 1987 which was received to review on June 24, 1987.

Only a few city departments have improved the manner in which unadvertised contracts are administered. The School Department, which for years performed poorly, has improved in terms of its timeliness and in the documentation included in its award letters. The Law Department was thorough in managing its FY 1987 contracts. The Assessing Department has substantially improved its contract administration by using more advertising and reducing the number of contracts it issues. Most departments, however, as the accompanying charts indicate, do a poor job in terms of contract administration.

OFFICE OF CONTRACT ADMINISTRATION

The Office of Contract Management was established in March, 1986 as a result of repeated recommendations to improve the management of city contracts. It has acted as a clearinghouse for the processing of city contracts. Departments are now able to at least determine where contracts are in the review process. However, the Contract Office has not been successful in requiring department heads to comply with contract procedures, especially the Mayor's Executive Order on contract compliance.

The percentage of late contracts increased in FY 1987 despite the creation of the Contract Office. Contract routing remains slow and contracts are routinely processed by the Contract Office for approval despite

not being in compliance with Mayoral policy. The office, which comes under the jurisdiction of the Administrative Services Department, does not have the authority to penalize department heads who continually submit contracts for approval which are unreasonably late or are not submitted until after the required services have been performed. It also fails to insist that award letters include clear and sufficient reasons why bidding is inappropriate.

THE REVIEW AND PUBLICATION OF UNADVERTISED CONTRACTS

The issuance of unadvertised contracts is largely done outside of the public view. During the past two fiscal years the City has issued contracts without public advertising that amount to over $437 million. The process required to have a contract approved without public advertising is as follows:

1. The department requesting the unadvertised contract puts that request in writing to the Mayor, identifies the contractor, the service to be performed, the terms of the contract, the reasons why public advertising is not appropriate and how much money that contractor has been paid by the department over the past three years;

2. The award letter and the accompanying contract documents are forwarded to the Contract Office;

3. The Contract Office reviews the contract material and sends it to the Law Department, the Budget Office and the Auditing Department for the appropriate reviews;

4. Once everything has been approved by the above agencies, the contract is forwarded to the Finance Commission for review and comment;

5. The contract is then returned to the Contract Office to be sent to the Mayor for signature, although in reality the Mayor delegates that authority.

The City Charter requires that the award of every contract without public advertising must be published in the City Record. The City Record publication, as it stands today, is a useless monitoring mechanism. Unadvertised contracts are not publicized until after the contract period has expired in most cases. They are never published in advance. For example, the past nine issues of the City Record have included the publication of only two unadvertised contracts. The June 22, 1987 issue included 16 Health and Hospital contracts, each of which ended on June 30, 1987. The June 8, 1987 issue contained 14 unadvertised contracts of the Mayor's Office of Elderly Affairs, each of which expired nearly one year earlier, on June 30, 1986.

The responsibility for the publication of the City Record comes under the jurisdiction of the Contract Office. The Finance Commission has been told on several occasions that the City Record will publish contracts in a timely fashion, yet it has not happened.

CONTRACT MANAGEMENT, THE COSTS TO THE CITY

Shortly after the Mayor issued his Executive Order on Contract Compliance he directed that an internal review of the contract process be conducted. The resulting report documented the weaknesses in the contract process and concluded that even if the city could improve its contract management by one percent that it would save the city some $2.5 million annually.

Those doing business with the City of Boston cannot be paid without a fully executed contract. Thus, contracts submitted late and especially after the fact result in delayed contract payments. The contracts cited previously in this report are good examples of the payment problem. The Wang contract with MIS was not submitted for approval until after the period of performance had expired. The contract was in an amount of $400,000. Wang, which worked from July, 1986 to June, 1987, was not paid for its work during that time. Similarly, the 20 or so contractors solicited by the PFD to do emergency work waited months for payment. Many have yet to be paid. The delayed payment results in vendors adding additional costs for the time that they go without being paid. Furthermore, fewer contractors and businesses are willing to work for the City of Boston which results in higher costs to the city.

CONCLUSIONS

The city issues over 1,500 unadvertised contracts annually at a cost of over $200 million per year. Despite the repeated recommendations of the Finance Commission and from within the Flynn Administration, the management of unadvertised contracts has not improved significantly over the past two years. The Mayor's Executive Order on Contract Compliance is routinely ignored. The conclusion of the Mayors' Transition Team's report, BOSTON IN TRANSITION, A FINANCIAL ANALYSIS, is as valid today as it was 3 1/2 years ago, "Boston's contracts are awarded and monitored with an informality hardly befitting the emormous amount of money at stake and are managed by an inefficient, bureaucratic system that is susceptible to abuse. Unduly cumbersome procedures

and official footdragging result in delays in contract approval that are so long that work is often done before the contract is authorized."

Unadvertised contracts have a greater potential for abuse. The Flynn Administration has documented the problems associated with contract management, has put the steps in place to effectively manage the unadvertised contract yet has failed to implement its own policies. The Mayor's Executive Order is violated by most of his department heads yet nothing is done about it. Objections of the Finance Commission are, too often, ignored. A department head can submit a contract for approval after the period of the contract has been completed and have that contract approved without a reprimand. There is an insufficient effort being made to resolve contractual problems. When PFD found that a former employee had failed to process over 20 contracts it made no attempt to quickly remedy the problem. It just began the review process late. It even required contractors to produce performance bonds for work completed months before. Some of those contracts are still floating through the system.

The failure to publish contracts in the City Record in a timely manner is inexcusable. The City Record is managed by the Contract Office and it could and should immediately publish every request for an unadvertised contract in a timely manner. That would advise the public and the business community of the existence of the contract and result in more competition.

The Finance Commission has no new recommendations to make in terms of improving the contract process. The Executive Order on Contract Compliance was issued on February 24, 1984. It provides for sufficient controls to manage no-bid contracts. The Office of Contract Management has been in place since March, 1986. It should be enforcing the Executive Order. The problem is one of implementation.

UNADVERTISED CONTRACT REQUESTS
Fiscal Year 1986

Department	Total No. of Requests	No. of Originals	No. of Amendments	Approved Amount
Administrative Services	37	32	5	$20,802,161
Assessing	49	32	17	1,323,863
Auditing	5	4	1	305,000
BNDEA	256	236	20	22,758,361
City Clerk	1	1	-	18,762
City Council	4	3	1	86,800
Collector-Treasurer	60	56	4	1,077,285
Comm. on Handicapped	2	2	-	11,000
Community Schools	11	7	4	958,528
Elderly Affairs	18	18	-	189,341
Election Dept.	1	1	-	2,500
Environment Dept.	4	4	-	44,000
Finance Commission	1	1	-	15,000
Fire Dept.	20	20	-	153,023
Health and Hospitals	189	144	45	25,399,686
Inspectional Services	32	27	5	613,964
Law Dept.	44	35	9	576,180
Library	17	16	1	2,653,782
Licensing	5	3	2	77,000
Management Info. Systems	45	38	7	2,053,419
Mayor's Office	10	7	3	374,000
Mayor's Office/JCS	29	8	21	4,420,678
Parks and Recreation	45	40	5	1,574,370
Penal	17	15	2	376,211
Police Dept.	41	35	6	659,431
Public Facilities	228	174	54	15,118,753
Public Works	75	43	32	16,690,151
Purchasing	44	39	5	8,290,302
Real Property	10	8	2	195,111
Retirement Board	2	2	-	65,000
School Dept.	387	346	41	73,283,350
Suffolk County	15	9	6	401,001
Traffic and Parking	33	25	8	5,473,570
Vet. Graves	1	1	-	24,115
Total	1738	1432	306	$206,065,698

UNADVERTISED CONTRACT
Fiscal Year 1986

Timeliness of Departmental Requests

Department	No. Late	No. After the Fact	No. of Emergencies	No. on Time	Total Requests
Administrative Services	25	3	0	9	37
Assessing	18	5	0	26	49
Auditing	5	0	0	0	5
BNDEA	151	3	0	102	256
City Clerk	1	0	0	0	1
City Council	1	1	0	2	4
Collector-Treasurer	23	0	0	37	60
Comm. on Handicapped	2	0	0	0	2
Community Schools	2	0	0	9	11
Elderly Affairs	16	0	0	2	18
Election Dept.	1	0	0	0	1
Environment Dept.	1	1	0	2	4
Finance Commission	1	0	0	0	1
Fire Dept.	4	0	13	3	20
Health and Hospitals	123	11	0	55	189
Inspectional Services	5	4	12	11	32
Law Dept.	28	2	0	14	44
Library	2	0	0	15	17
Licensing	3	0	0	2	5
Management Info. Systems	33	2	0	10	45
Mayor's Office	5	0	0	5	10
Mayor's Office/JCS	9	5	0	15	29
Parks and Recreation	11	4	6	24	45
Penal	11	3	1	2	17
Police Dept.	27	3	0	11	41
Public Facilities	65	16	21	126	228
Public Works	25	9	38	3	75
Purchasing	9	2	0	33	44
Real Property	3	2	0	5	10
Retirement Board	2	0	0	0	2
School Dept.	87	17	6	277	387
Suffolk County	8	0	1	6	15
Traffic and Parking	5	2	1	25	33
Vet. Graves	0	0	0	1	1
Total	712	95	99	832	1738

UNADVERTISED CONTRACT REQUESTS
Fiscal Year 1987

Department	Total No. of Requests	No. of Originals	No. of Amendments	Approved Amount
Administrative Services	53	51	2	$62,279,628
Arson Prevention Comm.	2	2	0	15,000
Assessing	37	30	7	1,458,577
Auditing	9	9	0	176,190
City Clerk	-	-	-	-0-
City Council	5	5	0	76,300
Collector-Treasurer	54	53	1	1,156,629
Community Schools	17	16	1	3,194,117
Elderly Affairs	6	6	0	86,596
Election Dept.	1	1	0	59,400
Environment Dept.	6	5	1	43,500
Fair Housing Commission	1	1	0	4,957
Finance Commission	3	2	1	37,670
Fire Dept.	17	15	2	151,752
Handicapped Affairs	1	1	0	3,400
Health and Hospitals	205	170	35	32,117,857
Human Rights Comm.	3	2	1	15,058
Inspectional Services	25	22	3	1,119,538
Law Dept.	54	51	3	871,695
Library	18	18	0	3,121,701
Licensing Board	5	4	1	46,810
Management Info. Systems	55	48	7	1,645,498
Mayor's Office	32	29	3	734,195
Mayor's Office/JCS	229	146	83	9,935,895
Mayor's Office/Consumer Aff.	5	3	2	53,938
Parks and Recreation	53	40	13	2,379,773
Penal	17	11	6	262,501
Police Dept.	40	39	1	1,383,630
Public Facilities	161	147	14	20,147,050
Public Works	74	44	30	32,255,163
Purchasing	35	26	9	9,167,116
Real Property	21	20	1	1,687,689
Retirement Board	3	3	0	650,000
* School Dept.	226	193	33	38,044,009
Suffolk County	22	15	7	572,050
Traffic and Parking	41	25	16	6,555,809
Veterans' Graves Reg.	7	7	0	18,985
Total	1543	1260	283	$231,529,676

** School Department totals do not include Chapter 766 and Chapter 636 contracts

UNADVERTISED CONTRACT
Fiscal Year 1987

Department	Timeliness of Departmental Requests				
	No. Late	No. After the Fact	No. of Emergencies	No. on Time	Total Requests
Administrative Services	44	1	0	8	53
Arson Prevention Comm.	2	0	0	0	2
Assessing	13	0	0	24	37
Auditing	8	0	0	1	9
City Clerk	0	0	0	0	0
City Council	0	0	0	5	5
Collector-Treasurer	50	0	0	4	54
Community Schools	15	0	0	2	17
Elderly Affairs	3	0	0	3	6
Election Dept.	1	0	0	0	1
Environment Dept.	5	0	0	1	6
Fair Housing Comm.	0	0	0	1	1
Finance Commission	0	0	0	3	3
Fire Dept.	5	0	11	1	17
Handicapped Affairs	1	0	0	0	1
Health and Hospitals	122	0	1	82	205
Human Rights Comm.	1	2	0	0	3
Inspectional Services	6	7	5	7	25
Law Dept.	12	1	0	41	54
Library	5	0	0	13	18
Licensing Board	4	0	0	1	5
Management Info. Systems	30	3	0	22	55
Mayor's Office	25	0	0	7	32
Mayor's Office/JCS	113	7	0	109	229
Mayor's Off./Cons. Aff.	4	0	0	1	5
Parks and Recreation	21	1	1	30	53
Penal	9	2	0	6	17
Police Dept.	29	1	0	10	40
Public Facilities	78	4	13	66	161
Public Works	38	0	1	35	74
Purchasing	10	1	0	24	35
Real Property	7	0	5	9	21
Retirement Board	2	0	0	1	3
School Dept.	94	4	5	123	226
Suffolk County	14	0	0	8	22
Traffic and Parking	7	0	0	34	41
Veterans Graves	0	7	0	0	7
Total	778	41	42	682	1543